

Text: [SF02308](#)Text: [SF02300 - SF02399](#)Bills and Amendments: [General Index](#)Text: [SF02310](#)Text: [SF Index](#)Bill History: [General Index](#)[Get Version To Print](#)

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Senate File 2309

Partial Bill History

- Bill Introduced: [S.J. 482](#)
- Committee Report Issued: [S.J. 505](#) [H.J. 932](#)
- Passed House: [H.J. 1002](#)
- Passed Senate: [S.J. 526](#) [S.J. 868](#)
- Signed by Governor: [S.J. 1058](#)
- [Complete Bill History](#)

Bill Text

PAG LIN

1 1 SENATE FILE 2309

1 2

1 3 AN ACT

1 4 PROVIDING FOR REGULATION OF PROCESSORS, PROVIDING FOR

1 5 PENALTIES, AND PROVIDING AN EFFECTIVE DATE AND FOR

1 6 RETROACTIVE APPLICABILITY.

1 7

1 8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 9

1 10 Section 1. Section 9H.1, Code 2001, is amended by adding

1 11 the following new subsections:

1 12 NEW SUBSECTION. 4A. "Base price" means the price paid for

1 13 swine, delivered to the processor, before application of any

1 14 premiums or discounts, and expressed in dollars per hundred

1 15 pounds of hot carcass weight as calculated in the same manner

1 16 as provided in 7 C.F.R. } 59.30.

1 17 NEW SUBSECTION. 5A. "Business association" means a person

1 18 organized under statute or common law in this state or another

1 19 jurisdiction for purposes of engaging in a commercial activity

1 20 on a profit, cooperative, or not-for-profit basis, including

1 21 but not limited to a corporation or entity taxed as a

1 22 corporation under the Internal Revenue Code, nonprofit

1 23 corporation, cooperative association, partnership, limited

1 24 partnership, limited liability company, limited liability

1 25 partnership, investment company, joint stock company, joint

1 26 stock association, or trust, including but not limited to a

1 27 business trust.

1 28 NEW SUBSECTION. 5B. "Cash or spot market purchase" means

1 29 the purchase of swine by a processor from a seller, if the
1 30 swine are slaughtered not more than fourteen days after the
1 31 date that the seller and the processor agree on a date of
1 32 delivery of the swine for slaughter and the base price for
1 33 purchasing the swine is determined by an oral or written
1 34 agreement between seller and processor executed on the day the
1 35 swine are delivered for slaughter.

2 1 NEW SUBSECTION. 5C. "Cattle operation" means a location
2 2 including but not limited to a building, lot, yard, corral, or
2 3 other place where cattle for slaughter are fed or otherwise
2 4 maintained.

2 5 NEW SUBSECTION. 6B. "Cooperative association" means the
2 6 same as defined in section 10.1.

2 7 NEW SUBSECTION. 14A. "Indirect" means to act or attempt
2 8 to accomplish an act through an interest in a business
2 9 association, through one or more affiliates or intermediaries,
2 10 or by any method other than a direct approach, including by
2 11 any circuitous or oblique method.

2 12 NEW SUBSECTION. 19A. "Qualified processor" means a
2 13 processor of pork products if all of the following apply:

2 14 a. (1) (a) Swine producers exercise a controlling
2 15 interest in the processor. "Controlling interest" means
2 16 actual control or the possession directly or indirectly of the
2 17 power to direct or cause the direction of the management and
2 18 policies of a processor, whether through the ownership of
2 19 voting securities, by contract, or otherwise.

2 20 (b) Of the total interest held by all persons in the
2 21 processor, swine producers hold at least sixty percent of the
2 22 interest. In addition, of the total interest held by all
2 23 persons in the processor, swine producers hold at least sixty
2 24 percent of interests with voting rights.

2 25 (2) Of the total interest held by all persons in the
2 26 processor, all retailers hold a total of not more than twenty
2 27 percent of the interest.

2 28 b. Another processor does not hold a direct or indirect
2 29 interest in the processor. However, this paragraph does not
2 30 apply to a person deemed to be a processor solely because the
2 31 person holds a threshold interest in the processor.

2 32 c. Not less than twenty-five percent of the swine
2 33 slaughtered by the processor each day are purchased through
2 34 cash or spot market purchases from sellers of swine who do not
2 35 hold a direct or indirect interest in the processor.

3 1 NEW SUBSECTION. 19B. "Retailer" means a person who is
3 2 engaged in the business of selling pork products in this
3 3 state, if all of the following apply:

3 4 a. The pork products are sold only on a retail basis
3 5 directly to the ultimate purchasers of the pork products for
3 6 consumption and not for resale.

3 7 b. The person is not engaged in the slaughter of swine.

3 8 c. A processor does not have a direct or indirect interest
3 9 in the person.

3 10 NEW SUBSECTION. 20A. "Swine operation" means a location
3 11 where swine are fed or otherwise maintained, including a
3 12 building, lot, yard, or corral; and swine which are fed or
3 13 otherwise maintained at the location.

3 14 NEW SUBSECTION. 20B. "Swine producer" means a person who
3 15 owns, controls, or operates a swine operation in this state or
3 16 who contracts for the care and feeding of swine in this state.

3 17 Sec. 2. Section 9H.1, subsection 19, Code 2001, is amended
3 18 to read as follows:

3 19 19. "Processor" means a person, ~~firm, corporation, limited~~
3 20 ~~liability company, or limited partnership, which who~~ alone or
3 21 in conjunction with others, directly or indirectly controls
3 22 the manufacturing, processing, or preparation for sale of beef
3 23 or pork products, ~~having~~ including the slaughtering of cattle

3 24 or swine or the manufacturing or preparation of carcasses or
3 25 goods originating from the carcasses, if the beef or pork
3 26 products have a total annual wholesale value of ten eighty
3 27 million dollars or more for the person's tax year. Any A
3 28 person, firm, corporation, limited liability company, or
3 29 limited partner with a shall be deemed to be a processor, if
3 30 any of the following applies:
3 31 a. The person has a threshold interest in a processor
3 32 which is a business association. "Threshold interest" means a
3 33 direct or indirect interest in the business association,
3 34 calculated as follows:
3 35 (1) For a processor of beef products, the person's
4 1 threshold interest begins at ten percent or greater interest
4 2 in another person, firm, corporation, limited liability
4 3 company, or limited partnership involved in the manufacturing,
4 4 processing or preparation for sale of beef or pork products
4 5 having a total annual wholesale value of ten million dollars
4 6 or more shall also be considered a processor.
4 7 (2) For a processor of pork products, the person's
4 8 threshold interest begins at ten percent for a processor of
4 9 pork products having a total annual wholesale value of at
4 10 least eighty million dollars and decreases to one percent for
4 11 a processor of pork products having a total annual wholesale
4 12 value of at least two hundred sixty million dollars. The
4 13 amount of the decrease in the amount of the threshold interest
4 14 shall equal one percent for each increased increment of twenty
4 15 million dollars in total annual wholesale value.
4 16 b. The person holds an executive position in a processor
4 17 of pork products or owes a processor of pork products a
4 18 fiduciary duty, if the processor directly or indirectly
4 19 controls the processing of pork products having a total annual
4 20 wholesale value of two hundred sixty million dollars or more.
4 21 A person who held such an executive position or owed a
4 22 fiduciary duty shall be deemed to still hold the position or
4 23 owe the duty for a two-year period following the date that the
4 24 person relinquishes the position or duty. An executive
4 25 position in a processor organized as a business association
4 26 includes but is not limited to a member of a board of
4 27 directors or an officer of a corporation or cooperative
4 28 association, a director or officer of a joint stock company or
4 29 joint stock association, a manager of a limited liability
4 30 company, a general partner of a limited partnership, or a
4 31 trustee of a trust.
4 32 Sec. 3. Section 9H.1, subsection 12, Code 2001, is amended
4 33 by striking the subsection.
4 34 Sec. 4. Section 9H.2, Code 2001, is amended to read as
4 35 follows:
5 1 9H.2 PROHIBITED OPERATIONS AND ACTIVITIES - EXCEPTIONS.
5 2 In order to The purpose of this section is to preserve free
5 3 and private enterprise, prevent monopoly, and also to protect
5 4 consumers, it is unlawful for any.
5 5 1. Except as provided in subsections 2 through 4, and
5 6 section 9H.2A, all of the following apply:
5 7 a. For cattle, a processor of beef or pork or limited
5 8 partnership in which a processor holds partnership shares as a
5 9 general partner or partnership shares as a limited partner, or
5 10 limited liability company in which a processor is a member, to
5 11 shall not own, control, or operate a feedlot cattle operation
5 12 in Iowa in which hogs or cattle are fed for slaughter this
5 13 state.
5 14 b. For swine, a processor shall not do any of the
5 15 following:
5 16 (1) (a) Directly or indirectly own, control, or operate a
5 17 swine operation in this state.
5 18 (b) Finance a swine operation in this state or finance a

5 19 person who directly or indirectly contracts for the care and
5 20 feeding of swine in this state.

5 21 For purposes of subparagraph subdivision (a) and this
5 22 subparagraph subdivision, all of the following apply:

5 23 (i) "Finance" means an action by a processor to directly
5 24 or indirectly loan money or to guarantee or otherwise act as a
5 25 surety.

5 26 (ii) "Finance" or "control" does not include executing a
5 27 contract for the purchase of swine by a processor, including
5 28 but not limited to a contract that contains an unsecured
5 29 ledger balance or other price risk sharing arrangement.
5 30 "Finance" also does not include providing an unsecured open
5 31 account or an unsecured loan, if the unsecured open account or
5 32 unsecured loan is used for the purchase of feed for the swine
5 33 and the outstanding amount due by the debtor does not exceed
5 34 five hundred thousand dollars. However, the outstanding
5 35 amount due to support a single swine operation shall not
6 1 exceed two hundred fifty thousand dollars.

6 2 (c) Obtain a benefit of production associated with feeding
6 3 or otherwise maintaining swine, by directly or indirectly
6 4 assuming a morbidity or mortality production risk, if the
6 5 swine are fed or otherwise maintained as part of a swine
6 6 operation in this state or by a person who contracts for the
6 7 care and feeding of swine in this state.

6 8 (d) Directly or indirectly receive the net revenue derived
6 9 from a swine operation in this state or from a person who
6 10 contracts for the care and feeding of swine in this state.

6 11 (2) ~~In addition, a processor shall not directly~~ Directly
6 12 or indirectly contract for the care and feeding of swine in
6 13 this state. However, this ~~section~~ subparagraph does not apply
6 14 to a cooperative association organized under chapter 497, 498,
6 15 499, or 501, if the cooperative association contracts for the
6 16 care and feeding of swine with a member of the cooperative
6 17 association who is actively engaged in farming. This ~~section~~
6 18 subparagraph does not apply to an association organized as a
6 19 cooperative in which another cooperative association organized
6 20 under chapter 497, 498, 499, or 501 is a member, if the
6 21 association contracts with a member which is a cooperative
6 22 association organized under chapter 497, 498, 499, or 501,
6 23 which contracts for the care and feeding of swine with a
6 24 member of the cooperative who is actively engaged in farming.

6 25 2. Subsection 1 shall not apply to a swine producer who
6 26 holds a threshold interest in a qualified processor in the
6 27 manner provided in section 9H.1, if all of the following
6 28 apply:

6 29 a. The swine producer's threshold interest in the
6 30 qualified processor is not more than ten percent.

6 31 b. The swine producer is not a processor. However, this
6 32 paragraph does not apply to a swine producer deemed to be a
6 33 processor solely because the swine producer holds a threshold
6 34 interest in the qualified processor as otherwise allowed under
6 35 this subsection or because the swine producer holds an
7 1 executive position in the qualified processor or owes the
7 2 qualified processor a fiduciary duty.

7 3 3. This section shall not preclude a processor, ~~limited~~
7 4 ~~partnership, or limited liability company from contracting~~
7 5 ~~from doing any of the following:~~

7 6 a. Contracting for the purchase of ~~hogs or cattle or~~
7 7 swine, provided that where the contract sets a date for
7 8 delivery which is more than twenty days after the making of
7 9 the contract ~~it~~, the contract shall do one of the following:

7 10 ~~1-~~ (1) Specify a calendar day for delivery of the
7 11 ~~livestock, or cattle or swine.~~

7 12 ~~2-~~ (2) Specify the month for the delivery, and shall allow
7 13 the farmer to set the week for the delivery within such month

7 14 and the processor, ~~limited partnership, or limited liability~~
7 15 ~~company~~ to set the date for delivery within such week.

7 16 ~~b. This section shall not prevent processors or~~
7 17 ~~educational institutions from carrying~~ Carrying on legitimate
7 18 research, educational, or demonstration activities, ~~nor shall~~
7 19 ~~it prevent processors from owning.~~

7 20 ~~c. Owning and operating facilities to provide normal care~~
7 21 ~~and feeding of animals cattle or swine for a period not to~~
7 22 ~~exceed ten days immediately prior to slaughter, or for a~~
7 23 ~~longer period in an emergency. Any processor or limited~~
7 24 ~~partnership which owns, controls, or operates a feedlot on~~
7 25 ~~August 15, 1975, shall have until July 1, 1985, to dispose of~~
7 26 ~~the property.~~

7 27 ~~4. A processor which is was in compliance with this~~
7 28 ~~section prior to April 5, 2000, and which is was in violation~~
7 29 ~~of this section as a result of 2000 Iowa Acts, chapter 1048,~~
7 30 ~~shall have until July 1 June 30, 2004, to comply with 2000~~
7 31 ~~Iowa Acts, chapter 1048. A processor shall not take action on~~
7 32 ~~or after April 5, 2000, which would be in violation of this~~
7 33 ~~section.~~

7 34 Sec. 5. NEW SECTION. 9H.2A COMPLIANCE REQUIREMENTS.

7 35 1. A processor that was in compliance with section 9H.2,
8 1 Code 2001, prior to January 1, 2002, and which is in violation
8 2 of section 9H.2, as amended by this Act, shall have until June
8 3 30, 2004, to comply with section 9H.2, as amended by this Act.

8 4 2. Notwithstanding any provision of this section, a
8 5 processor shall not take an action on or after January 1,
8 6 2002, that would be in violation of section 9H.2, as amended
8 7 by this Act.

8 8 3. The two-year period that a person who holds an
8 9 executive position in a processor or owes a processor a
8 10 fiduciary duty and thus is deemed to be a processor as
8 11 provided in section 9H.1, subsection 19, paragraph "b", shall
8 12 not apply if the person held the position or owed the duty on
8 13 January 1, 2002, and relinquishes the position or duty on or
8 14 before June 30, 2004.

8 15 4. This section is repealed on July 1, 2006.

8 16 Sec. 6. Section 9H.3, Code 2001, is amended to read as
8 17 follows:

8 18 9H.3 PENALTIES FOR PROHIBITED OPERATION - INJUNCTIVE
8 19 RELIEF.

8 20 ~~A processor violating section 9H.2 shall be assessed a~~
8 21 ~~civil penalty of not more than twenty-five thousand dollars.~~

8 22 1. The courts of this state may prevent and restrain
8 23 violations of this chapter through the issuance of an
8 24 injunction. The attorney general or a county attorney shall
8 25 institute suits on behalf of the state to prevent and restrain
8 26 violations of this chapter.

8 27 2. a. A processor who violates section 9H.2 is subject to
8 28 a civil penalty of not more than twenty-five thousand dollars.
8 29 Each day that a violation continues shall be considered a
8 30 separate offense.

8 31 b. If the attorney general or a county attorney is the
8 32 prevailing party in an action for a violation of section 9H.2,
8 33 the prevailing party shall be awarded court costs and
8 34 reasonable attorney fees, which shall be taxed as part of the
8 35 costs of the action. If the attorney general is the
9 1 prevailing party, the moneys shall be deposited in the general
9 2 fund of the state. If the county is the prevailing party, the
9 3 moneys shall be deposited in the general fund of the county.

9 4 Sec. 7. Section 9H.9, Code 2001, is amended to read as
9 5 follows:

9 6 9H.9 REPORTS BY PROCESSORS.

9 7 ~~Any A processor of beef or pork in this state shall file a~~
9 8 report with the secretary of state on or before March 31 of

9 9 each year, ~~a report setting forth as follows:~~

9 10 1. For all processors, the report shall include all of the
9 11 following:

9 12 1- a. The number of ~~hogs~~ swine and the number of cattle
9 13 owned and fed more than thirty days by the processor in ~~Iowa~~
9 14 this state during the processor's preceding ~~calendar or fiscal~~
9 15 tax year.

9 16 2- b. The total number of ~~hogs~~ swine and the total number
9 17 of cattle owned and fed more than thirty days by the processor
9 18 during the processor's preceding ~~calendar year or fiscal tax~~
9 19 year.

9 20 3- c. The number of ~~hogs~~ swine and the number of cattle
9 21 slaughtered in ~~Iowa~~ this state by the processor during the
9 22 processor's preceding ~~calendar or fiscal tax~~ year.

9 23 4- d. The total number of ~~hogs~~ swine and the total number
9 24 of cattle slaughtered by the processor during the processor's
9 25 preceding ~~calendar or fiscal tax~~ year.

9 26 e. The total wholesale value of beef or pork products that
9 27 have been processed by the processor during the preceding tax
9 28 year.

9 29 5- f. The total number of ~~hogs~~ swine for which the
9 30 processor has contracted for feeding as provided in section
9 31 9H.2.

9 32 2. For a qualified processor, the report shall include all
9 33 of the following:

9 34 a. The total number of swine slaughtered each day during
9 35 the qualified processor's preceding tax year.

10 1 b. The total number of swine slaughtered each day that are
10 2 purchased through cash or spot market purchases during the
10 3 qualified processor's preceding tax year.

10 4 Sec. 8. LEGISLATIVE INTENT - ACTING DIRECTLY AND
10 5 INDIRECTLY. This Act shall not be interpreted to mean that a
10 6 person may accomplish an act or attempt to accomplish an act
10 7 in a manner prohibited by chapter 9H as amended by this Act by
10 8 using any indirect method, if the person is prohibited by
10 9 chapter 9H as amended by this Act from accomplishing the act
10 10 or attempting to accomplish the act directly.

10 11 Sec. 9. SEVERABILITY. If any provision of this Act or the
10 12 application of this Act to any person or circumstance is held
10 13 invalid, the invalidity does not affect other provisions of
10 14 this Act or sections 9H.1, 9H.2, 9H.3, and 9H.9 as those
10 15 provisions existed prior to the effective date of this Act,
10 16 which shall be given effect without the invalid provision or
10 17 application, and to this end, the provisions of this Act are
10 18 severable.

10 19 Sec. 10. DIRECTIONS TO CODE EDITOR. The Code editor is
10 20 directed to do all of the following:

10 21 1. Replace the term "hogs" with the term "swine" wherever
10 22 it appears in chapter 9H for publication in the 2003 Code.

10 23 2. Transfer chapter 567 to a new chapter in proximity to
10 24 chapter 9H for publication in the 2003 Code.

10 25 3. Strike section 9H.2, subsection 4, as amended by this
10 26 Act for publication in the 2005 Code. The Code editor shall
10 27 internally renumber the section and correct internal
10 28 references as necessary.

10 29 Sec. 11. RETROACTIVE APPLICABILITY. This Act applies
10 30 retroactively to January 1, 2002.

10 31 Sec. 12. EFFECTIVE DATE. This Act, being deemed of
10 32 immediate importance, takes effect upon enactment.

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MARY E. KRAMER
President of the Senate

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11 9 I hereby certify that this bill originated in the Senate and
11 10 is known as Senate File 2309, Seventy-ninth General Assembly.

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11 16 Approved _____, 2002

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11 19

11 20 THOMAS J. VILSACK

11 21 Governor

BRENT SIEGRIST
Speaker of the House

MICHAEL E. MARSHALL
Secretary of the Senate

Text: [SF02308](#)Text: [SF02300 - SF02399](#)Bills and Amendments: [General Index](#)Text: [SF02310](#)Text: [SF Index](#)Bill History: [General Index](#)

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Last update: Thu Jun 20 03:31:07 CDT 2002

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